Supreme Court, U. S.
FILED
NOV 13 1980
MICHAEL RODAK, JR., CLERK

No. 79-6423

In the Supreme Court of the United States

OCTOBER TERM, 1980

ABBY GAIL LASSITER,

Petitioner,

—*v.*—

DEPARTMENT OF SOCIAL SERVICES OF DURHAM COUNTY, NORTH CAROLINA,

Respondent.

ON WRIT OF CERTIORARI TO
THE NORTH CAROLINA COURT OF APPEALS

JOINT APPENDIX

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East Central Community
Legal Services
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Attorneys for Petitioner

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Durham County
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(919) 683-2073

Attorney for Respondent

PETITION FOR CERTIORARI FILED APRIL 16, 1980.
CERTIORARI GRANTED OCTOBER 6, 1980.

INDEX TO JOINT APPENDIX

	Page
Chronological List of Relevant Docket Entries	1
Juvenile Petition, filed April 10, 1978	2
Order, rendered September 7, 1978	5
Notice of Appeal, filed September 18, 1978	9
Affidavit [of Thomas F. Loflin III], filed January 24, 1979	10
Affidavit of Indigency, filed January 24, 1979	13
Appeal Entries, filed January 24, 1979	14
Assignment of Error, filed January 24, 1979	15
Narrative of Testimony, filed January 24, 1979	16
Stipulation of Agreed Record on Appeal, filed January 24, 1979	17
Stipulation, filed January 24, 1979	18
Request for Judicial Notice, filed September 20, 1979	19
Opinion of the North Carolina Court of Appeals *In the Matter of William L. Lassiter*, filed November 6, 1979	21
Notice of Appeal [North Carolina Supreme Court], filed December 11, 1979	24
Petition to Supreme Court [North Carolina] for Discretionary Review Under N. C. Gen. Stat. § 7A-31, filed December 11, 1979	25
Answer to Petition to Supreme Court [North Carolina] for Discretionary Review Under § 7A-31, filed December 27, 1979	26
Judgment Dismissing Appeal and Denying Petition for Discretionary Review, rendered January 17, 1980	28
Request for Certification and Transmission of Transcript, filed April 16, 1980	30
Order of the Supreme Court of the United States Granting Motion for Leave to Proceed in forma pauperis and Granting Petition for Writ of Certiorari	31

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

April 10, 1978 Juvenile Petition filed in the General Court of Justice, District Court Division, Durham County, North Carolina.

August 31, 1978 Termination of parental rights trial held.

September 7, 1978 Order terminating parental rights entered.

September 18, 1978 Notice of Appeal filed [North Caroiina Court of Appeals]

January 24, 1979 Appeal entries filed.

September 20, 1979 Request for Judicial Notice filed.

September 26, 1979 Oral arguments before the North Carolina Court of Appeals heard.

November 6, 1979 Opinion of the North Carolina Court of Appeals *In the Matter of William L. Lassiter* filed.

December 10, 1979 Notice of Appeal filed.

December 10, 1979 Petition to Supreme Court for Discretionary Review under N. C. Gen. Stat. § 7A-31 filed.

December 27, 1979 Answer to Petition to Supreme Court for Discretionary Review under N. C. Gen. Stat. § 7A-31 filed.

January 17, 1980 Judgment Dismissing Appeal and Denying Petition for Discretionary Review (7914DC80) rendered.

April 16, 1980 Petition for a Writ of Certiorari to the North Carolina Court of Appeals and Application for Leave to Proceed *In Forma Pauperis* filed.

April 16, 1980 Request for Certification and Transmission of Trial Transcript [North Carolina Court of Appeals] filed.

October 6, 1980 The Application for Leave to Proceed *In Forma Pauperis* and the Petition for a Writ of Certiorari to the North Carolina Court of Appeals granted.

THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

File No. 7 J-56

IN THE MATTER OF

WILLIAM L. LASSITER
Born 9-26-74

JUVENILE PETITION—Filed April 10, 1978

Bonnie Cramer, having sufficient knowledge of the matters addressed herein, alleges and says:

1.

That she is a Social Worker with the Department of Social Services of Durham County, and as such is a designated representative for the purpose of bringing this Petition.

2.

That the minor child, William Lassiter, was born in Durham County on September 26, 1974 and is presently residing at a foster home in Durham County.

3.

That the minor child was placed in the legal custody of the Department of Social Services on May 23, 1975, after the Court adjudicated him to be a neglected child in need of protection of the State.

4.

That the minor child was placed in foster care at that time and continues in foster care.

5.

That the mother, Abby Gail Lassiter, is serving a sentence for second degree murder at Women's Prison in Raleigh, having been tried and sentenced in July, 1976.

6.

That the mother has not had any contact with the child since December of 1975. That the mother has without cause, failed to establish or maintain concern or responsibility as to the child's welfare.

7.

That the mother has willfully left the child in foster care for more than two consecutive years without showing that substantial progress has been made in correcting the conditions which led to the removal of the child, or without showing a positive response to the diligent efforts of the Department of Social Services to strengthen her relationship to the child, or to make and follow through with constructive planning for the future of the child.

8.

That the Petitioner is informed, believes, and alleges on information and belief, that the natural father of this minor child is William Boykin, whose last known address was 511 Burlington Street, Durham, North Carolina.

9.

That this Petitioner is informed, believes, and alleges on information and belief, that the natural mother and father of this minor child were never married to each other.

10.

That the natural father of this minor child has, without cause, failed to establish or maintain concern or responsibility as to the child's welfare.

11.

That the natural father of this child has not, prior to the filing of this Petition; (a) established paternity, judicially or by Affidavit; or (b) legitimated the child pursuant to provisions of G.S. 49-10, or filed a Petition for that purpose; or (c) legitimated the child by marriage to the mother; or (d) provided substantial financial support or consistent care with respect to the child and the mother.

This Petitioner, therefore, prays the Court to enter an Order, terminating the parental rights of Abby Gail Lassiter and William Boykin, natural parents of William L. Lassiter, placing him in the full custody of the Department of Social Services for adoptive placement as provided for by the General Statutes, Chapter 48.

This the 10th day of April, 1978.

/s/ Bonnie Cramer
BONNIE CRAMER

NORTH CAROLINA
DURHAM COUNTY

Bonnie Cramer, Social Worker for the Department of Social Services, being duly sworn, deposes and says: that she is the Petitioner herein, that she has read the foregoing Petition, and that the allegations therein are true of her own knowledge, except as to those things stated upon information and belief, and as to those she believes them to be true.

/s/ Bonnie Cramer

Sworn to and subscribed before me this 10th day of April, 1978.

/s/ Diane C. Wall
Notary Public
My commission expires: 9-30-78

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

File No. 75-J-56

IN THE MATTER OF WILLIAM L. LASSITER
Born 9-26-74

ORDER—September 7, 1978

This matter came on for hearing on the 31st day of August, 1978, before the Honorable S. F. Gantt, Judge Presiding over the Juvenile Division of the District Court of Durham County.

At the call of the matter, the Petitioner was present and represented by Thomas Russell Odom, Staff Attorney for the Department of Social Services. The Respondent, Abby Gail Lassiter, was present, but was not represented by counsel. The Respondent, William Boykin, was neither present nor represented.

Based on the testimony presented and the record before the Court, the Court makes the following findings of fact:

1. That the Respondent, William Boykin was personally served with a Summons and a copy of the Petition on April 11, 1978, but failed to Answer or otherwise respond as required by law.

2. That the Respondent, Abby Gail Lassiter was personally served with a Summons and a copy of the Petition on April 12, 1978, but failed to Answer as required by law.

3. That Abby Gail Lassiter is presently serving a 25 to 40 year sentence imposed upon her conviction in July, 1976 in the Superior Court of Durham County, for second degree murder.

4. That Abby Gail Lassiter was notified of this hearing on August 11, 1978 by Notice of Hearing delivered by registered mail to her in Women's Prison in Raleigh.

5. That subsequent to being served with a copy of the Summons and Petition, Abby Gail Lassiter communicated and conferred with her attorney regarding post-conviction proceedings, but did not seek counsel regarding this matter.

6. That Abby Gail Lassiter has had ample opportunity to seek and obtain counsel prior to the hearing of this matter, and her failure to do so is without just cause.

7. That the minor, William Lassiter has been in the legal custody of the Department of Social Services since May 23, 1975, after a determination by this Court that he was neglected as defined by law.

8. That a hearing was held on June 16, 1975, and the Court heard evidence, made findings of fact, and entered an Order continuing the legal custody of the minor in the Department of Social Services.

9. That the child has continued to live in a foster home since that time.

10. That subsequent to May 23, 1975 Abby Gail Lassiter visited the minor child in December, 1975 at the Department of Social Services, and has had no other contact with him except for two occasions when she saw him about town with the foster mother.

11. That Abby Gail Lassiter has not contacted the Department of Social Services about her child since December, 1975, has not expressed any concern for his care and welfare, and has made no efforts to plan for his future.

12. That Abby Gail Lassiter has failed to establish or maintain concern or responsibility as to the child's welfare since on or before May 23, 1975, and that such failure is without just cause.

13. That Abby Gail Lassiter was contacted by the Petitioner at Women's Prison regarding plans for the

minor child to no avail, and she has left the minor child in foster care for more than two consecutive years without showing a positive response to the efforts of the Department of Social Services to strengthen her relationship to the child, or to get her to plan for his future.

14. That the mother, Abby Gail Lassiter, and the putative father, William Boykin, were never married to each other, and the said Abby Gail Lassiter has never been married to anyone else.

15. That the father, William Boykin, has had no contact with the minor since December, 1975, at which time he denied paternity during a visit with the minor in the office of Department of Social Services.

16. That William Boykin has not legitimated the minor, nor has he been determined to be the father in any proceeding brought for that purpose, nor has he provided any financial support or consistent care for the minor.

17. That William Boykin has failed to establish or maintain concern or responsibility for the minor's welfare, and such failure is without just cause.

WHEREFORE, based on the foregoing facts, the Court concludes as a matter of law that Respondents Abby Gail Lassiter and William Boykin have wilfully failed to maintain concern or responsibility for the welfare of the minor.

AND FURTHER CONCLUDES that it is in the best interests of the minor that any and all parental rights now held by the Respondents to this minor be terminated.

NOW THEREFORE, IT IS HEREBY ORDERED that any and all parental rights held by the Respondents, Abby Gail Lassiter and William Boykin in and to the minor William Lassiter be and the same are hereby TERMINATED.

AND IT IS FURTHER ORDERED that the Department of Social Services have the full custody of the minor with the full authority to plan for his welfare, including, but not limited, placement for permanent adoption as his needs and best interests require.

This the 7th day of September, 1978.

/s/ S. F. Gantt
S. F. GANTT
Judge Presiding

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
JUVENILE SECTION

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

File No. 75 J 56

IN THE MATTER OF WILLIAM L. LASSITER

NOTICE OF APPEAL—Filed Sept. 18, 1978

Respondent, Abby Gail Lassiter, by and through her counsel, Benjamin A. Currence and the North Central Legal Assistance Program, hereby gives Notice of Appeal from the Judgment entered in the above captioned matter on the 7th day of September, 1978.

This the 18th day of September, 1978.

NORTH CENTRAL LEGAL
ASSISTANCE PROGRAM
Post Office Box 2101
353 West Main Street
Durham, North Carolina 27702
(919) 688-6396

By /s/ Benjamin A. Currence
BENJAMIN A. CURRENCE

NORTH CAROLINA
DURHAM COUNTY

File No. J56

IN THE MATTER OF WILLIAM L. LASSISTER

AFFIDAVIT

The undersigned, being first duly sworn, deposes and says:

1. That he is Thomas F. Loflin III, and at all times material hereto was an attorney licensed to practice law in the State of North Carolina and a member of the Durham County Bar.

2. That the undersigned was retained by the mother of Abigail Lassister to file a post-conviction petition attacking the legality of Abigail Lassister's conviction in the Durham Superior Court for second degree murder.

3. On April 28, 1978, the undersigned counsel filed a Post-Conviction Petition with the Superior Court of Durham County. The gravaman of this Petition was to the effect that Abigail Lassister was deprived of her rights under the Constitutions of the State and Federal Governernment to effective assistance of counsel and due process of law in that until the day of trial the State withheld from Abigail Lassister's trial attorney information to the effect that another person had admitted on the day of the homicide to an investigating police officer that that person had stabbed to death the deceased, and that Abigail Lassister's counsel did not use this information, or move for a mistrial, after this information was learned during the course of Abigail Lassister's trial.

4. Due to no action being taken by the court on the afore-mentioned application for a post-conviction hearing, on October 12, 1978, the undersigned counsel filed a Motion for Appropriate Relief and Evidentiary Hearing, essentially incorporating the allegations of the aforesaid

Petition. To date, no action one way or the other has been taken by the Superior Court of Durham County on the afore-mentioned pleadings.

5. After being retained by Abigail Lassister's mother to represent her, the undersigned counsel did visit Abigail Lassister at Women's Prison to discuss the aspects of the case prior to filing the court pleadings; and undersigned counsel further had correspondence back and forth with Abigail Lassister concerning her case before and after court pleadings were filed. All conversations and all correspondence related solely to the criminal case in which Abigail Lassister had been convicted of second degree murder and to nothing else.

6. Abigail Lassister never mentioned to the undersigned that she had any legal matter involving custody of her son, William L. Lassister, during the time of the attorney-client relationship.

7. Further, had the aforesaid Abigail Lassister mentioned that her son William L. Lassister was the subject of this proceeding, the undersigned would not have been interested in representing Abigail Lassister on such a matter as the instant case; nor would Abigail Lassister have had any funds to pay the undersigned for any such representation. The undersigned inquired into Abigail Lassister's financial status in connection with his representation of her in the criminal matter and found that she was clearly an indigent.

8. The first the undersigned ever heard of the instant matter was on November 16, 1978, when he was advised of the matter involving William L. Lassister by an attorney with the Durham Legal Aid Society and asked to supply this affidavit setting forth the history of his representation of Abigail Lassister.

This the 16th day of November, 1978.

/s/ Thomas F. Loflin
THOMAS F. LOFLIN III
Affiant

Sworn to and subscribed to before me
this 16th day of November, 1978.

/s/ Mary Diane Whittington
Notary Public

My Commission Expires: June 18, 1983

[SEAL]

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
JUVENILE SECTION

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

File No. 75 J 56

IN THE MATTER OF
WILLIAM L. LASSITER

AFFIDAVIT OF INDIGENCY

Your affiant, Abby Gail Lassiter, being first duly sworn, deposes and says:

1. I am the respondent in the above entitled action.
2. I am unable either to give the security required by law because of my poverty or to retain counsel to perfect the above appeal to the North Carolina Court of Appeals.
3. I am advised by my present counsel, Benjamin Currence of the North Central Legal Assistance Program, that there is error in matter of law in the decision of the Durham County District Court in which decision it was determined that my paternal rights be terminated.
4. I desire to appeal that decision to the North Carolina Court of Appeals and request that I be allowed to do so *in forma pauperis.*

/s/ Abby Gail Lassiter
ABBY GAIL LASSITER

Sworn and subscribed to before me this the 21st day of November, 1978.

/s/ Vivian H. Grimes
Notary Public

My Commission Expires: Feb. 23, 1981

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
JUVENILE SECTION

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

File No. 75 J 56

IN THE MATTER OF
WILLIAM L. LASSITER

APPEAL ENTRIES

Respondent has given written notice of appeal in accordance with Rule 3(a)(2) of the Rules of Appellate Procedure. Said written notice was given on the 18th day of September, 1978.

An appeal bond need not be posted in that this appeal is *in forma pauperis* as provided by Rule 6(b) in accordance with the provisions of North Carolina General Statute § 1-288. Respondent is allowed until November 20, 1978 to serve proposed record on appeal and the petitioner is allowed until thirty (30) days thereafter to serve objections or a proposed alternative record on appeal.

This the 29th day of November, 1978.

/s/ Samuel F. Gantt
SAMUEL F. GANTT
Judge Presiding

ASSIGNMENT OF ERROR

Respondent assigns as error the following:

1. The Court's failure to appoint counsel to represent respondent in a proceeding under North Carolina General Statutes § 7A-289.221 *et seq.*, for the termination of parental rights, on the ground that North Carolina law and the Fourteenth Amendment of the United States Constitution guarantee a natural parent who is indigent the right to have counsel appointed to represent him/her in a proceeding under North Carolina General Statute § 7A-289.22 *et seq.* for the termination of parental rights.

EXCEPTION NO. 1 (R. p. 7)

EXCEPTION NO. 1

NARRATIVE OF TESTIMONY

Prior to taking any evidence on the merits the Court questioned respondent with the following results:

The Court noted that respondent was served with a copy of the petition to terminate parental rights and summons on April 12, 1978, and failed to file a Response within the 30 day statutory period. Thereafter the case was scheduled for hearing on the 13th day of June, 1978. Notice of which hearing was served on Respondent on May 25, 1978, by Registered Mail at Women's Prison, Raleigh, North Carolina. The hearing was not held on June 13, 1978, because of a conflict with the Judges' Conference. Respondent's mother appeared for the hearing, however, and was informed that it would be rescheduled. It was rescheduled for August 31, 1978, and the Respondent was served on August 11, 1978, with a notice of hearing by Registered Mail signed for by D. Sales at the North Carolina Correctional Center for Women of the pending legal action. Although Respondent stated to the Court that she had informed officials at the North Carolina Correctional Center for Women, officials at that institution took no action to help respondent receive the assistance of legal counsel.

The Court concluded that, notwithstanding this fact, respondent herself had four months to consult an attorney and in fact had spoken with Thomas F. Loflin III, Esquire, about her criminal conviction (See affidavit of Thomas F. Loflin III, *supra.*) Since respondent had not consulted any attorney specifically with respect to the child, but had ample opportunity to, respondent was not entitled to a delay of the proceedings in order to retain counsel, nor did the Court appoint counsel to assist respondent in opposing the termination of her parental rights as to William L. Lassiter.

STIPULATION OF AGREED RECORD ON APPEAL

It is hereby stipulated and agreed that the foregoing shall constitute the agreed record on appeal to the North Carolina Court of Appeals in IN THE MATTER OF WILLIAM L. LASSITER.

This the 10th day of January, 1979.

NORTH CENTRAL LEGAL
ASSISTANCE PROGRAM
Post Office Box 2101
Durham, North Carolina 27702

By /s/ Benjamin A. Currence
BENJAMIN A. CURRENCE
Attorney for
Respondent-Appellant

DEPARTMENT OF SOCIAL SERVICES
of DURHAM COUNTY
Post Office Box 810
Durham, North Carolina 27702

By /s/ Thomas R. Odom
THOMAS R. ODOM
Attorney for Respondent

No. ———

NORTH CAROLINA COURT OF APPEALS

From Durham 75 J 56

IN THE MATTER OF
WILLIAM L. LASSITER

BEFORE GANTT, SAMUEL J., August 31, 1978, Session of Juvenile Division, District Court, Durham County, the General Court of Justice. Judgment was entered on September 8, 1978. Respondent Appealed. (Filed C.A. ————————)

STIPULATION

The Honorable Samuel J. Gantt, Judge Present and Presiding and Thomas R. Odom for petitioner.

The respondent was not represented by counsel.

It is stipulated and agreed by counsel for the petitioner and the respondent on appeal that a SUMMONS was issued on April 10, 1978, in case No. 75 J 56, entitled IN THE MATTER OF WILLIAM L. LASSITER, and that summons was returned showing service on respondent on April 12, 1978. It is further stipulated that respondent was served with notice of hearing on August 11, 1978, and that she was brought from the North Carolina Correctional Center for Women to the hearing at the Durham County Courthouse under custody.

/s/ Thomas R. Odom
THOMAS R. ODOM
Attorney for Petitioner
NORTH CENTRAL LEGAL
ASSISTANCE PROGRAM

By /s/ Benjamin A. Currence
BENJAMIN A. CURRENCE
Attorney for Respondent
on Appeal

No. 7914DC80

NORTH CAROLINA COURT OF APPEALS
FOURTEENTH DISTRICT

From Durham 75 J 56

IN THE MATTER OF
WILLIAM L. LASSITER

REQUEST FOR JUDICIAL NOTICE

TO: THE HONORABLE COURT OF APPEALS
OF NORTH CAROLINA

Pursuant to North Carolina General Statute § 8-1, appellant respectfully requests the Court to take judicial notice of North Carolina General Statute § 7A-546.1 which will become effective January 1, 1980. A certified copy of this statute is attached as Exhibit A.

Respectfully submitted this the 19th day of September, 1979.

NORTH CENTRAL LEGAL
ASSISTANCE PROGRAM
Post Office Box 2101
Durham, North Carolina 27702
(919) 688-6396

By /s/ Leowen Evans
LEOWEN EVANS
Attorney for Appellant

[SEAL]

STATE OF NORTH CAROLINA

DEPARTMENT OF THE SECRETARY OF STATE

I, THAD EURE, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached ONE (1) sheet to be a true copy of Section 7A-546.1 of the General Statutes of North Carolina as it appears in Chapter 815 of the Session Laws of 1979 to become effective January 1, 1980, and was ratified on the 7th day of June, 1979, by *The General Assembly of North Carolina* the original of which is now on file and a matter of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

DONE IN OFFICE at Raleigh, this the 14th day of September, 1979.

[SEAL]

/s/ Thad Eure
Secretary of State

"§ 7A-546.1. *Parent's right to counsel.*—In cases where the juvenile petition alleges that a juvenile is abused, neglected or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right.

No. 7914DC80

NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 1979

Durham County 75 J 56

IN THE MATTER OF WILLIAM L. LASSITER

Appeal by respondent from Gantt, Judge. Judgment entered 8 September 1978 in District Court, Durham County. Heard in the Court of Appeals 26 September 1979.

On 26 September 1974, William L. Lassiter, the child who is the subject of this proceeding, was born out-of-wedlock to respondent. On 23 May 1975, the child was adjudicated to be a neglected child in need of protection, and he was placed in the legal custody of the Durham County Department of Social Services. By the offices of that agency, the child was placed in foster care, where he continues at present. The mother of the child, Abby Gail Lassiter (respondent in this matter), is currently serving a sentence for second degree murder at Raleigh Women's Prison, having been convicted and sentenced in July of 1976. She has had no contact with the child since December of 1975. The putative father has offered no support of any type to either mother or child and has taken no action to legitimate the child.

The mother was notified of the hearing in this matter by registered mail and had opportunity to seek counsel in the matter, but did not do so. She took no action to obtain counsel, and appeared at the hearing only because counsel for petitioner caused her to be brought to Durham for the hearing. The trial court heard evidence, found facts, and entered an order terminating her parental rights in the child. From that order respondent appeals, assigning error.

Thomas Russell Odom, for petitioner-appellee.

Benjamin A. Currence, for the respondent-appellant.

MARTIN (Robert M.), Judge.

The sole question presented on appeal is whether the trial court committed reversible error when it did not appoint counsel to represent the indigent respondent in this proceeding to terminate respondent's parental rights in her child. We conclude that the trial court did not commit error.

There is no question but that there is a fundamental right to family integrity protected by the U. S. Constitution. *See* Quilloin v. Walcott, 434 U.S. 246, 54 L.Ed. 2d 511, 98 S.Ct. 549 (1978). At issue is whether due process requires the State to appoint and pay counsel to represent indigents in this situation. The requirements of procedural due process were certainly met in this case. Respondent had ample notice of the hearing, was actually present when it was held, and was allowed to testify and cross-examine petitioner's witnesses. *See* State v. Smith, 265 N.C. 173, 143 S.E. 2d 293 (1965). The requirement of substantive due process imposes a "standard of reasonableness and as such it is a limitation upon the exercise of the police power." In re Moore, 289 N.C. 95, 101, 221 S.E. 2d 307, 311 (1975). It certainly is not an unreasonable or arbitrary exercise of the police power for the State to intervene between parent and child where that child is helpless and defenseless and is endangered by parental neglect, inattention, or abuse. Certainly no unreasonableness or arbitrariness appears on the instant record where the evidence brought forward by the Department of Social Services demonstrated a pattern of neglect of her child by respondent substantially predating her present incarceration, and no evidence of any rehabilitation of respondent or amelioration of her attitude towards her child was adduced. The termination of parental rights by the State invokes no criminal sanctions against the parent whose rights are so terminated.

While this State action does invade a protected area of individual privacy, the invasion is not so serious or unreasonable as to compel us to hold that appointment of counsel for indigent parents is constitutionally mandated. We agree with the underlying rationale of In re Moore, *supra*, in that the legislature might have required and authorized the appointment and payment of counsel for indigents in these circumstances, but apparently it did not choose to do so. There is certainly no bar to its making such a requirement in the future (as N.C. Gen. Stat. § 7A-546.1, effective 1 January 1980, does under specified circumstances) but we decline to impose any such requirement upon the counties and State in the absence of clear legislative direction. Respondent's assignment of error is overruled. The judgment of the court below is affirmed.

Affiirmed.

Chief Judge MORRIS and Judge PARKER concur.

GENERAL COURT OF JUSTICE
STATE OF NORTH CAROLINA
IN THE COURT OF APPEALS

No. 7914DC80 From Durham

IN THE MATTER OF WILLIAM LASSITER

NOTICE OF APPEAL—Filed December 11, 1979

Abby Gail Lassiter, appellant, by and through her counsel, Leowen Evans and the North Central Legal Assistance Program, hereby appeals to the Supreme Court of North Carolina from the judgment of the Court of Appeals, filed on November 6, 1979, and certified on November 26, 1979. This judgment directly involves a substantial question arising under Article 14, Section 1, the Due Process Clause of the Constitution of the United States and Article I, Section 19, the Due Process Clause of the North Carolina Constitution, in that the judgment permitted the State to terminate appellant's fundamental, constitutional right to family integrity based on a hearing at which the indigent appellant was not provided with counsel. This constitutional issue was timely raised.

Appellant is indigent and is proceeding *in forma pauperis.*

This the 10th day of December, 1979.

NORTH CENTRAL LEGAL
ASSISTANCE PROGRAM
353 West Main Street
Post Office Box 2101
Durham, North Carolina 27702
(919) 688-6396

By /s/ Leowen Evans
LEOWEN EVANS

GENERAL COURT OF JUSTICE
STATE OF NORTH CAROLINA
IN THE COURT OF APPEALS

No. 7914DC80 From Durham

IN THE MATTER OF WILLIAM LASSITER

PETITION TO SUPREME COURT FOR
DISCRETIONALY REVIEW UNDER
G. S. § 7A-31—Filed December 11, 1979

Abby Gail Lassiter, appellant, by and through her counsel, Leowen Evans and the North Central Legal Assistance Program, hereby petitions the Supreme Court of North Carolina that the Court certify for discretionaly review the judgment of the Court of Appeals, filed on November 6, 1979, and certified on November 26, 1979, on the basis that the subject matter of the appeal has significant public interest and involves legal principles of major significance to the jurisprudence of the State in that it will decide whether an indigent should be granted the procedural safeguard of appointed counsel to protect her right to family integrity in a State action to terminate parental rights.

Appellant is indigent and is proceeding *in forma pauperis*.

This the 10th day of December, 1979.

NORTH CENTRAL LEGAL
ASSISTANCE PROGRAM
Post Office Box 2101
353 West Main Street
Durham, North Carolina 27702
(919) 688-6396

By /s/ Leowen Evans
LEOWEN EVANS

GENERAL COURT OF JUSTICE
STATE OF NORTH CAROLINA
IN THE SUPREME COURT

No. 144 PC—Fall Term 1979 From Durham

IN THE MATTER OF
WILLIAM LASSITER

ANSWER TO PETITION TO SUPREME COURT FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

The Petitioner, Durham County Department of Social Services, by and through the undersigned counsel, responds to the Petition to the Supreme Court for Discretionary Review under General Statute 7A-31, filed by the Respondent through her counsel of record and docketed in the Supreme Court on December 11, 1979 as follows:

1. That the Court of Appeal of North Carolina, in a decision rendered on November 6, 1979, found that the minor child had been born on September 26, 1974; that the minor child has been in the legal custody of petitioner since May 23, 1975; that the child's mother, Abby Gail Lassiter, Respondent herein, is presently serving a sentence for second degree murder at Raleigh Women's Prison; that she has had no contact with the child since December of 1975; that the Respondent was given ample notice of the hearing on the Petition to terminate her parental rights; that the Respondent appeared at the hearing on the Petition to terminate her parental rights, offered evidence and cross-examined witnesses;

2. That based on the record before the court as recited above, the Court of Appeals, without dissent, affirmed the District Court's termination of the mother's parental rights to the minor child.

3. That the minor child has lived over four of his five years of life with no contact with the natural mother.

4. That the Legislature has expressed a recognition of a necessity for a child such as the minor child involved herein to have a permanent plan for care at the earliest possible age, (G.S. 7A-289.22(2), and further expressed an intent to defer to the best interest of the child in those cases where the interest of the child and those of the parents conflict (G.S. 7A-289(3).

5. That the public interest in providing a permanent plan of care for this minor child outweighs the interest, now asserted by the parent, which has been considered by the Legislature and found by that body to not require legislative enactment.

WHEREFORE, the Petitioner herein respectfully requests the Court to deny the Petition for Discretionary Review.

This the 21st day of December, 1979.

/s/ Thomas Russell Odom
THOMAS RUSSELL ODOM
Assistant County Attorney
Attorney for the Petitioner
P.O. Box 810, Durham, N.C.
(919) 683-1341

No. 144PC

SUPREME COURT OF NORTH CAROLINA
FOURTEENTH DISTRICT

Fall Term 1979

(7914DC80)

IN THE MATTER OF
WILLIAM LASSITER

JUDGMENT DISMISSING APPEAL AND DENYING PETITION FOR DISCRETIONARY REVIEW—
January 17, 1980

This matter came on to be considered upon Abby Gail Lassiter's notice of appeal from the North Carolina Court of Appeals pursuant to G.S. 7A-30, and petition for discretionary review pursuant to G.S. 7A-31; upon consideration whereof, it is adjudged by the Court in Conference, this 8th day of January 1980 that the petition for discretionary review be denied, that the appeal be dismissed, and that it be so certified to the North Carolina Court of Appeals.

It is considered and ajudged further that Abby Gail Lassiter do pay the sum of NINE AND NO/100 DOLLARS ($9.00) and execution issue therefor.

/s/ CARLTON, J.
For the Court

The foregoing order is issued over my hand and the seal of the Supreme Court this 17 day of January, 1980.

/s/ John R. Morgan
JOHN R. MORGAN
Clerk of the Supreme Court
of North Carolina

cc: North Carolina Court of Appeals
Thomas Russell Odom, Attorney of Law
Leowen Evans, Attorney at Law

No. 7914DC80

NORTH CAROLINA COURT OF APPEALS
FOURTEENTH DISTRICT

From Durham 75 J 56

IN THE MATTER OF
WILLIAM L. LASSITER

REQUEST FOR CERTIFICATION AND TRANSMISSION OF TRANSCRIPT—
Filed April 16, 1980

TO: THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA

Pursuant to United States Supreme Court Rule 21 (1), Abby Gail Lassiter (Appellant in the above-captioned matter), respectfully requests the Court to certify the transcript of the hearing conducted August 31, 1978 and provide for its transmission to the United States Supreme Court.

Respectfully submitted this the 15th day of April, 1980.

NORTH CENTRAL LEGAL
ASSISTANCE PROGRAM
(353 West Main Street)
Post Office Box 2101
Durham, North Carolina 27702
919/688-6396

BY: /s/ Leowen Evans
LEOWEN EVANS
Attorney for Appellant

SUPREME COURT OF THE UNITED STATES

No. 79-6423

ABBY GAIL LASSITER, PETITIONER

v.

DEPARTMENT OF SOCIAL SERVICES OF DURHAM COUNTY, NORTH CAROLINA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NORTH CAROLINA

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 6, 1980

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